

STATE OF IOWA
BEFORE THE IOWA DEPARTMENT OF COMMERCE
ALCOHOLIC BEVERAGES DIVISION

RECEIVED
SEP 11 2008
REGULATION

IN RE:
Froehlich Properties, Inc.
d/b/a Fro's
309-311 Cedar St
Wilton, Iowa 52778

Liquor License No. LC-33568

)
) Docket No. D-2008-00089
)
)
) HEARING COMPLAINT
)
)
)

The Iowa Department of Public Safety, pursuant to authority granted in Iowa Code section 123.14, 2008 House File 2212, section 8 (to be codified at Iowa Code section 142D.8), and 641 Iowa Administrative Code section 153.8(3), hereby makes the following complaint against the above-named licensee.

1. Iowa Code section 123.1 provides that the Iowa Alcoholic Beverage Control Act is "an exercise of the police power of the State, for the protection of the welfare, health, peace, morals and safety of the people of the State and all provisions shall be liberally construed for the accomplishment of that purpose."

2. 2008 House File 2212, section 1 (Iowa Code section 142D.1) provides that "environmental tobacco smoke causes and exacerbates disease in nonsmoking adults and children sufficient to warrant measures that regulate smoking in public places, places of employment and outdoor areas in order to protect the public health and the health of employees."

3. The Iowa Smokefree Air Act (2008 House File 2212) provides that “smoking is prohibited and a person shall not smoke in . . . public places and all enclosed areas of employment.” 2008 House File 2212, § 3 (Iowa Code § 142D.3(1)).

4. 2008 House File 2212, section 9 (Iowa Code section 142D.9(4)) authorizes the suspension or revocation of any license or permit issued for the premises on which a violation of the Smokefree Air Act has been committed by any person who owns, operates, manages or otherwise has custody or control over that premises.

5. Iowa Code section 123.39 authorizes the Administrator of the Iowa Alcoholic Beverages Division to suspend or revoke a liquor control license of any licensee who violates any provision of Iowa Code chapter 123.

6. Iowa Code section 123.39(1)(b)(4) provides that a liquor license or wine or beer permit may be revoked upon the occurrence of any event that would have resulted in the disqualification of an applicant from receiving the license or permit.

7. Iowa Code section 123.30(2) provides that: “No liquor control license shall be issued for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations.”

8. 185 Iowa Administrative Code section 4.2(1) provides that: “Licensees and permittees shall at all times keep and maintain their respective premises in compliance with the laws, orders, ordinances and rules of the state, county and city health and fire departments and the Iowa department of inspections and appeals.”

VIOLATION

9. The respondent Licensee's premises is a public place and place of employment as defined by the Smokefree Air Act and is subject to the smoking prohibitions of the Act. 2008 House File 2212, § 2 (Iowa Code § 142D.2(13) & (16)); 2008 House File 2212, § 3 (Iowa Code § 142D.3(1)).

10. During the period commencing on July 1, 2008 and ending on August 4, 2008, five (5) public complaints were filed with the Iowa Department of Public Health against the Licensee alleging that the Licensee allowed or permitted smoking on the above-captioned licensed premises in violation of the Smokefree Air Act. See Attached Exhibit A.

11. The Iowa Department of Public Health issued the Licensee Notices of Potential Violations on July 11, 2008 and August 8, 2008 in an effort to inform the Licensee of the violations of the Smokefree Air Act alleged to have occurred on its licensed premises and to educate the Licensee of its duties and obligations under the Act. See Attached Exhibits B & C.

12. On or about July 3, 2008, an officer of the Muscatine Police Department observed individuals openly smoking inside the Licensee's premises and the presence of ashtrays in violation of the Smokefree Air Act. See 2008 House File 2212, §§ 3 & 6 (Iowa Code §§ 142D.3 & 142D.6(4)); 641 Iowa Admin. Code § 153.3(1); 641 Iowa Admin. Code § 153(5)(1)(a) & (f). The officer further observed that the Licensee's

employees did nothing to correct or remedy the open violations of the Smokefree Air Act occurring on the licensed premises. See 2008 House File 2212, § 8 (Iowa Code § 142D.8(3)); 641 Iowa Admin. Code § 153(5)(4).

13. On or about August 28, 2008, Investigators for the Tobacco Enforcement Section of the Iowa Alcoholic Beverage Division observed individuals openly smoking inside the Licensee's premises and the presence of ashtrays in violation of the Smokefree Air Act. See 2008 House File 2212, §§ 3 & 6 (Iowa Code §§ 142D.3 & 142D.6(4)); 641 Iowa Admin. Code § 153.3(1); 641 Iowa Admin. Code § 153(5)(1)(a) & (f). The investigators further observed that required signage was improperly posted. See 2008 House File 2212, § 6 (Iowa Code § 142D.6(3)); 641 Iowa Admin. Code § 153(5)(1)(d). The investigators further observed that the Licensee's employees did nothing to correct or remedy the open violations of the Smokefree Air Act occurring on the licensed premises. See 2008 House File 2212, § 8 (Iowa Code § 142D.8(3)); 641 Iowa Admin. Code § 153(5)(4).

14. The Licensee's open and continuing failure to comply with all applicable provisions of the Smokefree Air Act constitutes a violation of Iowa Code section 123.30(2) and 185 Iowa Administrative Code section 4.2(1) and is sufficient grounds for the suspension and/or revocation of the Licensee's liquor license. See Iowa Code § 123.39; 2008 House File 2212, § 9 (Iowa Code § 142D.9).

WHEREFORE, the Department of Public Safety requests that the Administrator find pursuant to Iowa Code chapter 123 and 2008 House File 2212 that the above-named licensee was in violation of the above-cited Iowa Code sections and enter the appropriate remedy.

THOMAS J. MILLER
IOWA ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read 'JRL', is written over a horizontal line.

JOHN R. LUNDQUIST
Assistant Attorney General
Hoover State Office Building
Des Moines, IA 50319
(515) 281-3658
(515) 281- 7551 (fax)

Witnesses:

Lt. Brett Talkington
Muscatine Police Department
312 E 5th Street
Muscatine, Iowa 52761

Chief Gary R. Coderoni
West Burlington Police Department
312 E 5th Street
Muscatine, Iowa 52761

Investigators Steve Henson,
Steve Nemmers
Iowa Alcoholic Beverages Division
1918 SE Hulsizer
Ankeny, Iowa 50021

City Clerk
City Hall
215 Sycamore
Muscatine, Iowa 52761-3840

Copies to:

Margaret LaMarche
Administrative Law Judge
Department of Inspections & Appeals
Administrative Hearings Division
Wallace State Office Bldg-3rd Fl.,
502 E 9th
Des Moines, Iowa 50319

John Henry Ellison, Chief Investigator
Iowa Lottery
2323 Grand Avenue
Des Moines, Iowa 50312

John Lundquist
Assistant Attorney General
Hoover State Office Building
Department of Justice
Des Moines, Iowa 50319

Beverly Zylstra
Social Gaming Unit
Lucas State Office Bldg.
Des Moines, Iowa 50319

Lt. Neil Wellner
ISP, District #12
22365 20th Avenue
Stockton, Iowa 52769-9612

Gayle Collins
Commissioner
Iowa Alcoholic Beverages Division
1918 SE Hulsizer
Ankeny, Iowa 50021

Brian Froehlich
Froehlich Properties, Inc.
PO Box 1288
Wilton, Iowa 52778

Iowa Smokefree Air Act Complaint & Compliance Program[HELP](#) [Main Menu](#) [Business Listing](#) [Log Out](#)**Business:** Fro's**Status:** ☒ Active ☐ Inactive**Date Created:** 07/09/2008**Address 1:** 309 Cedar St.**Address 2:****City:** Wilton**State:** Iowa**Zip:** 52778**County:** MUSCATINE**Phone:****Mailing Address:****Address 1:** P.O. Box 1288**Address 2:****City:** Wilton**State:** Iowa**Zip:** 52778**Non-IA City:****Business Type:** Bar**Contractor:** (None)**Legal Owner:** Froehlich Properties, Inc.**Legal Owner:****First Name:** Brian**Last Name:** Froehlich**Fax #:****Email Address:****Phone:** 563-732-3977**Comment:****Comment History:** ***Notice of Violation Letter Sent on 7/11/08***

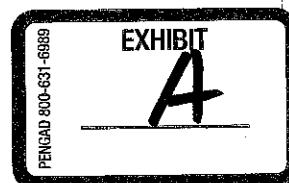
7/14/08 5:25 p.m. Owner received First Notice of Potential Violation and called Helpline. Requested to speak with Bonnie Mapes. Bonnie spoke with him at length. He was concerned that the notice "would go against him"--that he could be cited or fined based upon this notice. Bonnie reiterated that the letters are not citations and that the intent was to provide him with information to help him comply with the law. Bonnie told him that no citations could be issued unless until a law enforcement officer conducted a on-site inspection and observed a violation, and that this would only occur if we recieved a second validated complaint within 12 months. He said he was complying with the law. He said, "Thank you for calling me back. That was respectful."

NOV LETTER RECIEVED BY BUSINESS ON 07/14/08

2nd NOV LETTER SENT ON 08/05/08-AMH

Provided ABD notification on 8/19/08 to request law enforcement site visit

2ND NOV LETTER RECEIVED BY BUSINESS ON 8-18-08-RR



[Delete Business](#)[Submit](#)[Reset](#)**Complaint History**

<u>Complaint Num</u>	<u>Date Performed</u>	<u>Calendar Year</u>	<u>Report Type</u>	<u>View</u>
71	07/03/2008	2008	Inspector's Report	View
124	07/08/2008	2008	Public Complaint	View
285	07/15/2008	2008	Public Complaint	View
303	07/24/2008	2008	Public Complaint	View
352	07/22/2008	2008	Public Complaint	View
433	08/04/2008	2008	Public Complaint	View
564	08/28/2008	2008	Law Enforcement Site Visit	View

1

[Add Complaint or Site Visit](#)



Iowa Department of Public Health
Promoting and Protecting the Health of Iowans

Thomas Newton, MPP, REHS
Director

Chester J. Culver
Governor

Patty Judge
Lt. Governor

First Notice of Potential Violation
Iowa Smokefree Air Act

July 11, 2008

Brian Froehlich
Froehlich Properties, Inc.
P.O. Box 1288
Wilton, IA 52778

Dear Mr. Froehlich:

The Iowa Department of Public Health has received a complaint of an alleged violation of the Iowa Smokefree Air Act at Fro's, 309-311 Cedar Street in Wilton. The following paragraph describes the particular alleged violation(s) in brief detail.

A patron of Fro's observed smoking by both the bartender and patrons inside the premises on July 3, 2008. It was also reported that ashtrays were present at the bar, and the required signs were not posted. These are violations of the following requirements of the Smokefree Air Act:

- **Smoking in prohibited areas.** An employer, owner, operator, manager, or person having custody or control of any enclosed facility or outdoor area where smoking is prohibited is required not to permit smoking in that area.
- **Improper notification of violation.** An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited is required to inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and shall request that the individual stop smoking immediately.
- **Signs not posted.** An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited is required to post "no smoking" signs at every entrance to the public place, place of employment, area declared nonsmoking and outdoor area where smoking is prohibited, that clearly and conspicuously inform persons that they are entering a no smoking facility or area.
- **Ashtrays.** The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place or outdoor area where smoking is prohibited shall remove all ashtrays from these locations. "Ashtray" means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs.

This letter is not a citation or notification of a fine. We are taking this opportunity to provide you with information that will help you ensure that your establishment is in compliance with the Smokefree Air Act.

Enclosed is a packet containing basic information about provisions of the laws and a brochure with a link to the Web site where you find more detailed information.

Additionally, to further assist your establishment in complying with the Smokefree Air Act, a representative from your local community tobacco control program may contact you to arrange for an educational site visit. Please take advantage of this opportunity to become more familiar with the law.

This First Notice of Potential Violation has not been forwarded to any law enforcement agency. However, if a second valid complaint concerning your establishment is received within the next 12 months, a Second Notice of Violation may be issued and this notice will be forwarded to a local law enforcement agency for further action.

Further action may result in civil penalties of not more than \$100 for a first violation or not more than \$500 for subsequent violations. In addition, as stipulated in the Smokefree Air Act on page 13, line 5: *"violation of this chapter by a person who owns, operates, manages, or who otherwise has custody or control of a public place, place of employment, area declared a nonsmoking place, or outdoor area regulated under this chapter may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred."*

We are available to assist you in bringing your establishment into compliance with the law. If you have any questions concerning the law or would like to receive additional information, please visit www.IowaSmokefreeAir.gov or call 1-888-944-2247.

Sincerely,

Bonnie E. Mapes
Director, Division of Tobacco Use Prevention & Control



Iowa Department of Public Health
Promoting and Protecting the Health of Iowans

Thomas Newton, MPP, REHS
Director

Chester J. Culver
Governor

Patty Judge
Lt. Governor

Second Notice of Potential Violation
Iowa Smokefree Air Act

August 8, 2008

Brian Froehlich
Froehlich Properties, Inc.
P.O. Box 1288
Wilton, IA 52778

Dear Mr. Froehlich:

This letter regards a complaint that was filed about an alleged violation of the Iowa Smokefree Air Act at Fro's, 309 Cedar St. in Wilton. The following paragraph describes the particular violation(s) in brief detail:

A law enforcement officer observed smoking by patrons inside the premises on July 24, 2008. It was also reported that ashtrays were present at the bar, and the required signs were not posted. These are violations of the following requirements of the Smokefree Air Act:

- *Smoking in prohibited areas.* An employer, owner, operator, manager, or person having custody or control of any enclosed facility or outdoor area where smoking is prohibited is required not to permit smoking in that area.
- *Improper notification of violation.* An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited is required to inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and shall request that the individual stop smoking immediately.
- *Signs not posted.* An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited is required to post "no smoking" signs at every entrance to the public place, place of employment, area declared nonsmoking and outdoor area where smoking is prohibited, that clearly and conspicuously inform persons that they are entering a no smoking facility or area.
- *Ashtrays.* The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place or outdoor area where smoking is prohibited shall remove all ashtrays from these locations. "Ashtray" means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs.

A First Notice of Potential Violation was issued to your establishment on July 11, 2008. This Second Notice of Potential Violation has been forwarded to a local law enforcement agency for further action.



If you have any questions concerning the law or would like to receive additional information, please visit www.IowaSmokefreeAir.gov or call 1-888-944-2247. We would like to assist in bringing your establishment into compliance with the law.

Sincerely,

Bonnie E. Mapes

Bonnie E. Mapes

Director, Division of Tobacco Use Prevention & Control